

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-094

OCT 04 2023

Forest Conservation Plan No. F20230360
Woodward High School Reopening, Phase 2
Date of Hearing: September 7, 2023

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on June 16, 2023, Montgomery County Public Schools (“Applicant”) filed an application for approval of a forest conservation plan on approximately 27.75 acres of land located at 11211 Old Georgetown Road (“Subject Property”) in the 1992 North Bethesda Garrett Park Master Plan area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20230360, Woodward High School Reopening, Phase 2 (“Forest Conservation Plan” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board Staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board dated August 28, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 7, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Bartley, with a vote of 3-0; with Chair Harris, Commissioners Bartley, and Hedrick voting in favor and Commissioners Linden and Pedoeem being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230360 on the Subject Property, which amends FFCP MR2020022 for Woodward High School Reopening Phase 1. All site development

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Approved as to

Legal Sufficiency: /s/ Matthew T. Mills

M-NCPPC Legal Department

elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required subject to the following conditions:¹

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
2. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
3. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
4. Before the start of any demolition, clearing, grading, or construction for this development Application, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
5. The Applicant must install the Afforestation/Reforestation landscape plantings for forest conservation credit, as shown on the approved FCP, in the first planting season following stabilization of the area to be planted.
6. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 147 caliper inches, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
7. The Applicant must construct the formalized ADA compliant 8-foot wide hard-surface trail connection to the existing asphalt path in Timberlawn Local Park as required in Resolution MCPB No. 20-097 for FFCP MR2020022. Completion of the trail construction must occur within one year following issuance of the

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

sediment and erosion control permit for Woodward High School Reopening Phase 2.

8. Prior to certification of the Final Forest Conservation Plan, the Applicant must define the area of landscaping on the southern boundary of the site north of Cedarwood Drive that is being applied to fulfilling the 0.16 acres of required afforestation/reforestation resulting from the off-site forest clearing on the Edson Lane forest, and make any technical corrections that might be identified by staff during their final review of the FFCP.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A, and ensures the protection of environmentally sensitive features.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Phase 2 construction requires removal of 0.18 acres of offsite forest. This results in a new reforestation requirement for 0.16 acres of forest mitigation if planted within the same watershed, or 0.25 acres of forest mitigation if planted outside the watershed. The temporary construction easement that will cover that forest removal is to be converted into a permanent maintenance easement for the required maintenance of the retaining wall. Although this portion of the Edson Lane forest will be replanted to forest, due to the maintenance easement over the area forest conservation credit cannot be granted for the forest replanting on this property.

The Forest Conservation Law establishes priorities for forest mitigation to ensure that the mitigation plantings go to the places where they are most needed. Section 22A-12(e)(3), *Priority areas and plantings*, states that "Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, topographically unstable areas, and land use and road buffers." While there are not areas on site that contain stream buffers, or where forest areas could be connected or expanded, there are areas where steep slopes along the edge

of the site need to be stabilized, and where adjacent residential land uses need to be buffered from the school uses.

And, while the Forest Conservation Law includes a preferred sequence for reforestation and reforestation that prioritizes on-site forest planting, then off-site forest planting, forest enhancement, supplemental planting, off-site forest bank credits, fee-in-lieu, and landscaping with an approved plan, Section 22A-12(e)(1)(C) says that the preferred sequence may be modified for a specific project to achieve the objectives of a master or sector plan or other County land use policies. Objective 2.6(A)(1) of the North Bethesda/Garrett Park Master Plan is to "Protect and reinforce the integrity of exiting residential neighborhoods." Objective 2.6(A)(8) is to "Preserve and expand green areas and greenways, including institutional open space, for environmental protection, wildlife sanctuary, recreation, and visual relief."

The Forest Conservation Regulations establish requirements that permit the use of landscaping to fulfill required forest conservation mitigation. Section 22A.00.01.08(G)(1) of the Forest Conservation Regulations ("Credit Toward Afforestation and Reforestation for Landscaping and Tree Save") states that "The Planning Board or Planning Director, as applicable, must find that all opportunities for establishing forest have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area is applied." Since this site is constrained by size and topography, the new high school and all of its required facilities take up all available space on the site, leaving no room to establish new forest on the property. However, small areas around the perimeter of the site can accommodate landscaping that will help meet the objectives of the Forest Conservation Law to prioritize directing afforestation and reforestation to buffer other land uses, and help meet the objectives of the *North Bethesda/Garrett Park Master Plan*.

Therefore, Staff is requiring that the 0.16 acres of new reforestation mitigation be fulfilled on-site by applying at least 0.16 acres of the landscaping area on the southern boundary of the school site and north of Cedarwood Drive, as shown on the landscaping plans accompanying the Mandatory Referral, to fulfill the mitigation requirement, and to buffer the adjacent residential communities and expand green areas for environmental protection and visual relief.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a high priority for retention and protection ("Protected

Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s critical root zone (“CRZ”), requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 19 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the removal and disturbance to the specified trees are due to the development of the Property, location of the trees, site constraints, and necessary site design requirements. Trees No. 14E, 41, 43, 43A, 45, 46, 47, 48, and 49 are located near the northern site boundary where they are being impacted by construction of a new baseball diamond, a retaining wall and associated grading. Trees No. 23, 25, 27, 29A, 29D, 30 and 64 are located along the eastern site boundary, and are impacted by ballfield and stadium construction, retaining walls, grading and stormwater management. Trees No. 14, 15, and 16 are located along the southern site boundary where they are impacted by grading and a required ambulance access road to the stadium. The inability to remove these trees would potentially render portions of the site undevelopable for this project. The granting of a variance to allow development of the site is not unique to this Applicant, and the Board finds that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and constraints, and necessary design requirements of this Application, including fire department access and stormwater management requirements.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and constraints and the proposed site design and layout of the Subject Property, and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Protected Trees requested for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Tree being impacted will remain to provide the same level of water quality protection as it currently provides.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves the replacement of Protected Trees at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 147 inches with the installation of 49 3-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. No mitigation is required for Protected Trees impacted but retained.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is OCT 04 2023 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal consistent with the Maryland Rules for the judicial review of administrative agency decisions.

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Hedrick, seconded by Commissioner Bartley, with a vote of 3-0-2; Chair Harris, and Commissioners Bartley and Hedrick, voting in favor of the motion, Vice Chair Pedoeem and Commissioner Linden abstaining, at its regular meeting held on Thursday, September 21, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
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